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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Billed Party Preference for InterLATA 0+ Calls	CC Docket No. 92-77

COMMENTS OF BELL ATLANTIC, BELLSOUTH AND NYNEX

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Summary

The Bell Atlantic telephone companies,[1] BellSouth Corporation on behalf of its affiliated companies, and the NYNEX telephone companies believe that the Commission should adopt new regulations in competitive markets such as those for toll and operator services only where new rules are necessary to protect consumers. Any new regulations should be targeted at the consumer problem identified by the Commission -- they should not impose obligations and burdens that are not necessary to fixing that problem. These are the principles that should guide the Commission when it deals with the issues raised in its latest Notice in this proceeding.[2]

The consumer problem identified in this Notice is that, in spite of TOCSIA and the Commission's existing regulations, members of the public are still being charged unreasonably high rates for certain operator assisted calls. Billed party preference ("BPP") would presumably deal with this problem, but at a cost the Commission concludes would be in excess of one billion dollars, a cost

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[1] The Bell Atlantic telephone companies serve New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia and the District of Columbia.

[2] Second Further Notice of Proposed Rulemaking (rel. June 6, 1996) ("Notice").

that far exceeds the benefit to the public. The Commission should end its consideration of requiring carriers to provide BPP.

The Commission should adopt the price ceiling and monitoring plan proposed by the Industry Coalition more than a year ago.[3] This is the most effective, least costly way to solve the problem of operator service provider ("OSP") rates that are too high.

Price disclosure is not an effective way to deter overpricing by OSPs and is costly to provide. If it is required at all, it should be required only for calls that exceed a Commission-established price benchmark. Carriers with prices below the benchmark should not be put to the expense of implementing rate disclosure, and their customers should not be inconvenienced by having to listen to disclosure messages. The presence of a disclosure message will not act as a red flag to consumers if there is one on every call.

If a benchmark were to be used, it should distinguish between rates that are reasonable and those that are "too high," like the one previously proposed by the Industry Coalition. A benchmark should not be arbitrarily based on the prices charged only by the three largest interexchange carriers.

Any benchmark system should not be more complex and costly than necessary to achieve its goals. Benchmarks should be set annually. An OSP that exceeds the benchmark should have the option of quoting either its average price or the actual price of the call. OSPs cannot be responsible for disclosing charges imposed by others, such as hotel surcharges on calls from guest

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[3] Ex Parte Communication, CC Docket No. 92-77 (filed Mar. 8, 1995) (filed by CompTel, on behalf of itself, Bell Atlantic, NYNEX, BellSouth, US West and American Public Communications Council) ("Ex parte").

rooms. Disclosure on collect and verified billed-to-third-number calls need be made only to the person paying for the call, not to the calling party.

The Commission should not require any OSP to file tariffs. The Commission can collect whatever information is necessary to administer a benchmark program independently of formal tariffs.

The Commission Should Adopt a Price Ceiling.

The Commission apparently rejected, without discussion in the Notice, the Industry Coalition's proposal that the Commission adopt a rate ceiling for operator-assisted calls.[4] This plan included a requirement that exchange carriers report to the Commission on calls billed by them that exceed the ceiling. OSPs that wanted to charge more than the rate ceiling would have to justify their prices to the Commission. We still believe that this is the best, least costly way to solve the problem.[5]

First, a rate ceiling has teeth — a mere benchmark does not. An OSP that violates a rate ceiling would be subject to the full range of penalties under the Communications Act, while those pricing above a benchmark would do so with impunity.

Second, a benchmark will not protect those consumers who are calling from phones that block access code dialing, who do not know how to reach other OSPs, or who are in a hurry and cannot take the time to dial around. A price disclosure requirement, even if religiously adhered to by OSPs, will do little for these consumers.

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[4] *Id.* 5-8.

[5] A price ceiling would also effectively deal with the special problems of inmate-only phones (Notice ¶¶ 48-49).

Third, the Industry Coalition proposed a simple way of monitoring whether calls are priced above a price ceiling.[6] However, it will be difficult for the Commission to monitor compliance with a benchmark/disclosure plan Such a plan will, therefore, neither solve the consumer problem nor relieve the administrative burden the Commission has today in dealing with informal consumer complaints about OSP overcharges.

The Commission Should Not Require OSP Price Disclosure.

Price disclosure is ineffective and costly.

The Notice asks whether the Commission should require any price disclosure on all OSP calls.[7] The answer is plainly that it should not.

First, price disclosure will not really solve the consumer problem. In many cases, the consumer hearing the disclosure will not know what to do about it or will not be able to go to another phone or dial another OSP. The over-priced calls will still be placed, consumers will still be billed for them, and regulators will still be complained to.

Second, any price disclosure requirement is difficult to police and enforce. The very OSPs that ignore the Commission's benchmark will likely ignore their price disclosure obligation as well.

Third, price disclosure is a far more expensive solution than others that have been proposed. While we do not yet have price estimates from switch manufacturers, we believe that the cost to buy and install the hardware and software necessary for all OSPs to provide price disclosure

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6 Ex parte 8-9.

7 Notice ¶ 15.

messages would not be insignificant.[8] At least as important, disclosure messages could add ten to twenty seconds to the holding time of an operator-assisted call. This delay could be longer if the Commission adopts more complicated disclosure requirements. Delays of this magnitude could require OSPs to add capacity to their operator switches and transmission systems in order to handle call volumes at peak periods.

Fourth, the problem of OSP overcharging should diminish over time, as it has decreased since the implementation of TOCSIA. This will occur as OSPs continue to introduce and advertise dial-around access arrangements. The Commission should not impose costly solutions for problems that the marketplace will solve.

If disclosure is required, it should be limited to calls that exceed a benchmark.

As indicated above, we believe that the Commission should adopt the price ceiling and monitoring plan proposed by the Industry Coalition early last year. This would make any price disclosure unnecessary. However, if the Commission decides against a price ceiling and to require price disclosure instead, disclosure should be necessary only on calls that exceed the benchmark. Requiring disclosure on all calls would defeat the purpose of the benchmark/disclosure process, would impose costs on OSPs with reasonable prices and would inconvenience and annoy the very consumers the Commission seeks to protect.

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[8] The Commission might be under the impression that exchange carriers can utilize existing systems, such as their systems for rating coin calls, to provide price disclosure for operator-handled calls. However, the coin call rating system only responds to 1+ coin calls. Other operator-handled calls today route to the automated alternate billing system where the caller is provided with a tone and menu options, and then inputs the appropriate billing information.

First, the purpose of the disclosure message is to alert the caller to the fact that he or she might be incurring a higher-than-normal charge. If there is disclosure on every call, the message will not serve as a warning to callers.

Second, the vast majority of calls will be priced below the benchmark. Callers will be annoyed at having to wait for price quotes and listening to disclosure messages on the millions and millions of calls that are unquestionably reasonably priced.

Third, many OSPs will price below the benchmark for *all* calls. There is no reason to require these OSPs to incur the significant costs of making price disclosures when their prices are reasonable.

Other disclosure issues.

Collect and billed-to-third-number calls are different from other OSP calls in that they are not billed to the person placing the call. In cases in which the billed party is contacted before the call is completed, any disclosures should be made not to the caller, but to the person paying for the call.

The Notice proposes to require OSPs "to inform consumers of the total charges for which they would be liable" for the call.[9] In many cases, a caller will be subject to charges beyond those set by the OSP, such as those imposed by hotels and hospitals on calls from room phones. OSPs should not be required to factor these charges into their disclosure messages for several reasons. First, these charges are typically already disclosed on tent cards or otherwise at those locations, and no additional consumer protection should be necessary. Second, the OSP often has no knowledge of these charges. While some presubscribed OSPs have relationships with the hotel that might permit it to know

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[9] Notice ¶ 35.

about the hotel's surcharge, the hundreds of other OSPs whose customers reach them by dialing around the presubscribed carrier have no way to comply.

The Commission should leave to the option of the OSP which form of price disclosure identified in the Notice[10] to adopt.

Finally, if requiring price disclosure, the Commission should be mindful of the interaction between such rules and other provisions of the Act that require certain exchange carriers to provide operator services to other carriers.[11] If an exchange carrier's prices are below the benchmark and it is not required to provide price disclosure, sections 251 and 271 should not require it to buy that capability in order to provide operator services for other carriers. Those sections require exchange carriers to offer only operator service functions that they already have. It does not require them to pay for new equipment to enable them to satisfy the price disclosure obligations of other carriers.

An OSP Benchmark Should Be Designed
To Identify Charges That Are Too High.

The benchmark proposed by the Industry Coalition[12] was designed to deal with the problem identified by the Commission — prices for OSP services that the public believes are too high. It does this directly, by determining what prices have generated consumer complaints to regulatory agencies. It is broadly based, taking into account prices charged by *all* OSPs and the perceptions of all users of OSP services.

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10 Notice ¶ 35.

11 47 U.S.C. §§ 251(b)(3), 271(c)(2)(B)(vii)(III).

12 Ex parte 7-8.

The Commission, however, proposes to adopt a benchmark based only on the prices charged by the Big Three interexchange carriers, AT&T, MCI and Sprint.[13] This proposal is misguided and is based on a faulty premise.

Unlike the Industry Coalition proposal, a Big Three benchmark is not directed at the consumer problem the Commission wants to deal with — rates that are too high.

The Commission suggests that the rates of the Big Three are what consumers expect to pay because these carriers are the presubscribed carriers on the vast majority of customer lines, and, therefore, these rates should serve as the benchmark for all carriers.[14] This premise, however, is defective. While most consumers are accustomed to the rates of one of the Big Three for the 1+ calls from their homes or businesses, these prices are lower than that same carrier's prices for 0+ calls and may bear no particular, predictable relationship to 0+ prices. While the Big Three also handle the vast majority of 0+ calls as well, callers on the move typically use a variety of OSPs, depending on the carrier to which the particular line is presubscribed.

The Commission Should Forbear
From All OSP Tariff Filing Requirements.

Section 10(a) added by the Telecommunications Act of 1996 requires the Commission to forbear from applying any provision of the Communications Act or any Commission regulation if its application is not necessary to ensure reasonable charges and consumer protection and if forbearance is in the public interest. We believe that this test requires the Commission to forbear from applying all OSP tariffing requirements, those imposed by both section 203 and section 226 of the Act, under the

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[13] Notice ¶ 23.

[14] Notice ¶ 23.

circumstances outlined by the Commission in paragraph 40 of the Notice. These circumstances — either an audible disclosure of charges before connecting the call or a certification that the OSP will not charge more than the Commission-established benchmark — will be far more effective in ensuring reasonable rates (and, therefore, protecting consumers) than a mandatory tariff filing requirement.[15]

The Commission Should Close its Inquiry on BPP.

Billed party preference was an interesting idea that proved to be too expensive and, ultimately, unnecessary. Both technology and the marketplace passed it by. The Commission should terminate this proceeding and leave BPP with PicturePhone and other telecommunications curiosities that never quite made it.

The Notice speculates that BPP might become more economical with the implementation of long-term number portability.[16] This is not the case. The cost of BPP includes a substantial investment in OSS7, additional signaling capacity and transports costs. All of these costs would be in addition to the costs of service provider portability. The information required for BPP is best provided through LIDB systems, which also provide validation for operator-assisted calls. BPP would not be provided through the number portability database, and number portability, therefore, would not reduce the number of database inquiries for BPP.

Conclusion

The Commission should end its inquiry on BPP and adopt a price ceiling on operator assisted calls, giving an OSP with higher rates the opportunity to prove that those rates were reasonable.

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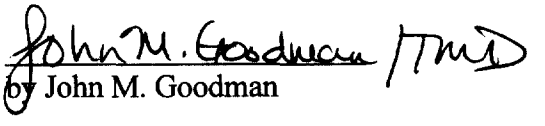
15 *See* Notice ¶ 42.

16 Notice ¶ 4.

The Commission should not require price disclosure or should, at most, require it on calls that exceed a Commission-established benchmark.

Respectfully submitted,

BELL ATLANTIC TELEPHONE COMPANIES
BELLSOUTH CORPORATION
NYNEX TELEPHONE COMPANIES



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Dated: July 17, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 1996 a copy of the foregoing "Comments of Bell Atlantic" was served on the parties on the attached list.

Tracey DeVaux

* Via hand delivery.

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